

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
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CARLOS MARTINEZ.

Plaintiff,

- against -

MEMORANDUM AND ORDER

95-CV-3788 (ILG)

JOHN GAYSON, THE PORT AUTHORITY OF  
NEW YORK and NEW JERSEY and  
SERVICELINK, INC.,

Defendants.

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GLASSER, United States District Judge:

After a jury verdict in this civil rights, false arrest and malicious prosecution action issued against defendants Port Authority of New York and New Jersey ("Port Authority") and John Gayson ("Gayson") finding the defendants liable for \$310,000.00 in compensatory damages and Gayson liable for an additional \$10,000.00 in punitive damages, both defendants moved for judgment as a matter of law, pursuant to Fed. R. Civ. P. 50(b) or, in the alternative, for a new trial, pursuant to Fed. R. Civ. P. 59. For the following reasons, these motions are granted in part and denied in part.

#### FACTS

The jury heard the following testimony: Plaintiff Carlos Martinez ("Martinez") was employed as a security guard by

Servicelink, Inc. at the John F. Kennedy International Airport, which is owned and operated by defendant Port Authority . Tr. 26. His job assignment in or about September 22, 1994 was to guard a broken security gate at the airport. Tr. 33-38. Gayson, a Port Authority police officer, approached Martinez and asked him to close the gate. When Martinez explained that it was broken, Gayson manually closed the gate and returned to his car. Tr. 41-42. When another car approached the gate, Gayson - who had returned to his car - began yelling at Martinez, who was attempting to obtain assistance from a supervisor. Tr. 44. Gayson called Martinez a "fuckin' two bit an hour security guard" and threatened to lock him up. Tr. 45-46. Martinez continued to wait for his supervisor and Gayson, who had earlier returned to his car, again approached Martinez. Gayson grabbed the identification card that Martinez wore about his neck, grabbed and pushed Martinez, knocked him to the ground and handcuffed him. Tr. 48-49. Martinez was then taken to the Port Authority Police Prison, where he was held in custody for approximately five hours and then released with a desk appearance ticket. Tr.

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<sup>1</sup> Servicelink was dismissed from this case by Order dated April 30, 1998. The motions at hand do not contest the propriety of that Order.

Tr. 52. Martinez was charged with "obstructing governmental administration, a misdemeanor, resisting arrest, a misdemeanor, and disorderly conduct, a violation." Complaint, ¶ 26. After a trial in the Criminal Court of the City of New York, Queens County, Martinez was acquitted of all charges. Tr. 60.

Based on these allegations, Martinez claimed that Gayson and Port Authority violated 42 U.S.C. § 1983 and committed battery, false arrest and imprisonment and malicious prosecution. A jury trial was held from April 27 through April 29, 1998. The jury found Gayson liable for false arrest, malicious prosecution and a violation of § 1983 and awarded Martinez \$310,000 in compensatory damages and \$10,000 in punitive damages. Jury Verdict Sheet. Port Authority was also found liable for compensatory damages.<sup>2</sup> Id.

## **DISCUSSION**

### **I. Timeliness of Defendants' Motion**

Plaintiff contends that the motions at issue were not

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<sup>2</sup> Although the jury verdict sheet does not address the source of Port Authority's liability, the Court dismissed the § 1983 claim as against Port Authority. Tr. 194-196.

filed within the ten-day period for judgment prescribed by Fed. R. Civ. P. 50 and 59. Plaintiff notes that judgment was entered on May 5, 1998 and that defendants' motions were served and filed on May 19, 1998. However, because the time limits set forth in Rules 50 and 59 should be read in conjunction with Rule 6(a), see Northwestern Nat'l Ins. Co. v. Alberts, 937 F.2d 77, 82 (2d Cir. 1991), Saturdays and Sundays are not included in the ten days and the motions are timely.

## II. Motion for Judgment as a Matter of Law<sup>3</sup>

### A. Standard

Motions for judgment as a matter of law "may not properly be granted unless the evidence, viewed in the light most favorable to the non-moving party, is insufficient to permit a reasonable juror to find in that party's favor." Taylor v. Brentwood Union Free School District, No. 97-7481, \_\_ F.3d \_\_, 1998 WL 220951, \*7 (2d Cir. May 6, 1998). When considering such

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<sup>3</sup> Although Port Authority has moved for judgment as a matter of law, the arguments it advances — that the compensatory damages awarded are excessive and that the jury should have been instructed to separately award damages for each cause of action — are more properly considered as part of a motion for a new trial. They are considered as such below.

motion "the court must give deference to all credibility determinations and reasonable inferences of the jury, and it may not itself weigh the credibility of witnesses or consider the weight of the evidence." Id. As one court summarized the applicable standard, a motion for judgment as a matter of law should not be granted unless

- (1) there is such a complete absence of evidence supporting the verdict that the jury's finding could only have been the result of sheer surmise and conjecture, or
- (2) there is such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded men could not arrive at a verdict against him.

Bonura v. Chase Manhattan Bank, N.A., 795 F.2d 276, 277 (2d Cir. 1986) (*per curiam*) (citing Mattivi v. South African Marine Corp., 618 F.2d 163, 168 (2d Cir. 1980)).

#### B. Punitive Damages

Gayson raises two distinct arguments concerning the award of punitive damages: (1) that the award of punitive damages was inconsistent with the finding that Gayson had not employed excessive force; and (2) that the only claim that could have supported an award of punitive damages – the malicious prosecution claim – should not have been submitted to the jury because plaintiff had not shown a post-arraignment deprivation of

liberty. These arguments are addressed separately below.

8        ~~Excessive Force~~

The jury found that Gayson did not employ "excessive force" in arresting Martinez. See Angel Aff., Ex. B (Verdict Sheet). Gayson argues that "[a] finding that GAYSON used excessive force when he arrested the plaintiff would have been the only permissible finding that GAYSON acted with the requisite malice, wantonness or oppression . . . that would have justified a punitive damage award" and that "[t]he jury verdict was, therefore, logically incompatible with its finding of no excessive force." Gayson Mem. at 3.

In support of this argument, Gayson cites to Blissett v. Coughlin, 66 F.3d 531 (2d Cir. 1995). In that case, the jury found that three of six defendants had used excessive force against the plaintiff – the first cause of action – but imposed punitive damages against all six defendants. After the parties stipulated to dismissal of the punitive damages award against those defendants that had been found not to have used excessive force, the defendants appealed, arguing that the award of punitive damages on the first cause of action against all of the defendants signaled a miscarriage of justice requiring a new trial. The court rejected this contention, holding that the

error did not render the verdict invalid. Gayson argues that the implication of the case is that excessive force was required for a finding of punitive damages and that, absent the stipulation in Blissett, "there would have been a completely different outcome." Gayson Mem. at 4.

However, in Blissett, punitive damages were eventually awarded *on the second cause of action* – for unconstitutional confinement – against two of the three defendants who were the subject of the stipulation. Far from standing for the proposition that a finding that excessive force was not employed is inconsistent with an award of punitive damages, Blissett actually demonstrates that the two findings are potentially compatible.<sup>4</sup>

b. Malicious Prosecution

Gayson contends, however, that the elements of only one of the claims asserted by Martinez include malice, wantonness or oppression – the malicious prosecution claim – and that that claim should not have been submitted to the jury because a necessary element, a post-arraignment deprivation of liberty, had

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<sup>4</sup> The issue of excessive force arose in this case in the context of determining whether the battery alleged by Martinez resulted in a violation of § 1983.

not been pleaded or proven. Consequently, Gayson contends, the award of punitive damages is insupportable. Gayson Mem. at 4-7.

This contention is without merit. The malicious prosecution claim was properly submitted to the jury. As Martinez points out, malicious prosecution was pleaded as both a § 1983 violation and as a common law tort. Although a post-arraignment deprivation of liberty is a necessary component of a § 1983 malicious prosecution claim, Singer v. Fulton County Sheriff, 63 F.3d 110, 117 (2d Cir. 1995), it is not an element of its common law analogue.<sup>5</sup> See Murphy v. Lynn, 118 F.3d 938, 947 (2d Cir. 1997) (setting forth elements of common law malicious prosecution claim). Second, because during his trial Martinez was required to attend court proceedings, Tr. 60, a post-

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<sup>5</sup> In his reply papers, Gayson contends that it would be unfair to justify the punitive damages award through invocation of the pendent malicious prosecution claim because the jury was not instructed on the elements that must be satisfied to establish punitive damages under New York law. Gayson Rep. Mem. at 4. In one of the few cases that compare the federal and state punitive damages standards, one court concluded that the substantive standard was identical. Greenbaum v. Svenska Handelsbanken, NY, 979 F. Supp. 973, 983 (S.D.N.Y. 1997). See also In re United States Lines, Inc., 169 B.R. 804, 827 (Bankr. S.D.N.Y. 1994), rev'd on other grounds, 220 B.R. 5 (S.D.N.Y. 1995).



arraignment deprivation of liberty can be said to have resulted. See Murphy, 118 F.3d at 847-848. For all of these reasons, the claim was properly submitted to the jury and may support an award of punitive damages.<sup>6</sup> Gayson's motion for judgment as a matter of law is therefore denied.

### III. Motion for a New Trial

#### A. Standard

A less stringent standard is applied to a Rule 59 motion than to a Rule 50 motion for judgment as a matter of law. Mahoney v. Canada Dry Bottling Company of New York/Coors Distributing Company of New York, 94 Civ. 2924, 1998 WL 231082, \*4 (E.D.N.Y. May 7, 1998). "The decision whether to grant a new

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<sup>6</sup> Because the malicious prosecution claim was properly submitted to the jury, Gayson's argument that he is entitled to a new trial because it is unclear whether the jury awarded punitive damages on the basis of the improperly submitted malicious prosecution claim need not be considered.

Gayson also notes that the transcript of the jury charge states that "[t]he plaintiff must also prove the element of malice, that is, the criminal prosecution was instituted maliciously, without hatred or ill-will or recklessly, with a wanton disregard for the plaintiff's rights." The word "without" is simply a typographical error in the transcript.

trial on the ground that the verdict is against the weight of the evidence 'is committed to the sound discretion of the district court.'" U.S. East Telecommunications, Inc. v. U.S. West Telecommunications Services, Inc., 38 F.3d 1289, 1301 (2d Cir. 1994) (citing Metromedia Co. v. Fugazy, 983 F.2d 350, 363 (2d Cir. 1992)). When exercising its discretion, "a trial court may order a new trial when it is convinced 'that the jury has reached a seriously erroneous result or that the verdict is . . . against the weight of the evidence.'" Id. (citing Mallis v. Barkers Trust Co., 717 F.2d 683, 691 (2d Cir. 1983)). A court may also order a new trial where the jury verdict is excessive. In such a case, the court "may order a new trial, a new trial limited to damages, or, under the practice of remittitur, may condition a denial of a motion for a new trial on the plaintiff's accepting damages in a reduced amount." Tingley Systems, Inc. v. Norse Systems, Inc., 49 F.3d 93, 96 (2d Cir. 1995).

B. Separate Awards

Port Authority contends that it is entitled to a new trial because the court did not accede to its request that the jury verdict form contain separate damage entries for each cause of action. Port Authority Mem. at 5-6. It cites no authority in support of this argument and, considering the risk of duplicative

awards that may have resulted from such a jury verdict form, see Wickham Contracting Co., Inc. v. Bd. of Education of City of New York, 715 F.2d 21, 25 (2d Cir. 1983), the denial of the request was clearly proper.

C. Compensatory Damages

The defendants contend that the amount of compensatory damages awarded was excessive and that it is entitled to a new trial as a result. Gayson Mem. at 11; Port Authority Mem. at 6. Citing to Gasperini v. Center for Humanities, Inc., 518 U.S. 415 (1996), Port Authority argues that the governing standard is supplied by state law. Also citing to Gasperini, Martinez argues that federal law supplies the governing standard. Because of the divergence between the two standards – New York law regards such an award as excessive if it “deviates materially from what would be reasonable compensation,” New York C.P.L.R. § 5501(c), while federal law regards an award of compensatory damages as excessive if it “shocks the conscience of the court,” see, e.g., Ismail v. Cohen, 899 F.2d 183, 186 (2d Cir. 1990) – we must first determine the applicable standard.

In Gasperini, the Supreme Court held that a federal court sitting in diversity must apply state law in determining

whether a damages award is excessive. 518 U.S. at 425-431. The Court did not, however, address whether a court must apply state law in determining whether a damages award pertaining to a pendent state law claim is excessive. Courts in this circuit are divided over whether Gasperini also requires application of § 5001 to pendent state law claims. Compare Carter v. Rosenberg & Estis, P.C., 95 Civ. 10439, 1998 WL 150491, \* 18 n.12 (S.D.N.Y. March 31, 1998) (court does not apply § 5001, but nevertheless considers cases applying that section in assessing the propriety of the award), Kim v. Dial Service Int'l, Inc., 96 Civ. 3327, 1997 WL 458783, \*5 n.2 (S.D.N.Y. Aug. 11, 1997) (same) and Trivedi v. Cooper, 95 Civ. 2075, 1996 WL 724743, \*6 n.2 (S.D.N.Y. Dec. 17, 1996) (same) with Bick v. City of New York, 95 Civ. 8781, 1998 WL 190283 (S.D.N.Y. April 21, 1998) (§ 5001 applies to pendent state law claims) and Shea v. Icelandair, 925 F. Supp. 1014, 1020 (S.D.N.Y. 1996) (same). The difficulty in determining the proper standard is here compounded by the presence of a lump sum award for a violation of § 1983 and pendent state law claims for false arrest and malicious prosecution. Only one case appears to have addressed the issue of the application of § 5001 to a lump sum award in a Section 1983 case with pendent state law claims. In

But last, Mason v. City of New York, 949 F. Supp. 1068 (S.D.N.Y. 1996), the court held that "[b]ecause the jury awarded lump sum damages encompassing both federal and state claims, [it] must determine excessiveness under both federal and state law." 949 F. Supp. at 1075.

In the instant case, the lump sum award is, like Mason, for a violation of § 1983 and pendent state law claims. Moreover, because only Gayson was found liable for a violation of § 1983, it is even more clear that the award should be reviewed under both standards.

"To determine whether the award is excessive, it is appropriate to examine awards in similar cases." Trivedi, 1996 WL 724743, \* 6. See also Ismail, 899 F.2d at 186 (2d Cir. 1990) ("[r]eference to other awards in similar cases is proper"). The instant case is remarkably similar to Bender v. City of New York, 78 F.3d 787 (2d Cir. 1996). In Bender the plaintiff alleged that she had been shoved and told to "move on" by a police officer while she was riding on a bicycle near a demonstration. Two other officers then joined the first officer in forcibly arresting her for disorderly conduct and resisting arrest. She was then handcuffed and placed in a police van where she became involved in an altercation with another police

officer. She was charged with disorderly conduct, resisting arrest and delaying police and was held in custody for almost thirty hours. Six months later all charges were dropped.

She then commenced a federal action alleging section 1983 and pendent state law claims for false arrest, malicious prosecution, battery and intentional infliction of emotional distress. After a jury verdict of \$300,000, the defendants appealed, arguing that the \$150,000 award for intentional infliction of emotional distress was improper. The court noted that the defendants had not objected to the jury verdict form -- which had encouraged duplicative awards -- or the aggregate amount awarded and therefore refrained from what would otherwise have been the proper course, ordering a new trial unless the plaintiff agreed to a "substantial remittitur." Nevertheless, because of the "plain error" inherent in the excessiveness of the award, the court ordered a new trial unless a remittitur of \$150,000 -- representing the entirety of the award for intentional infliction of emotional distress -- were accepted.

In King v. Macri, 993 F.2d 294 (2d Cir. 1993), the court rejected a challenge to a \$75,000 award in a § 1983 action alleging malicious prosecution, holding that the award was appropriate where the plaintiff suffered serious emotional and

mental injuries as a result of his incarceration at Rikers Island for a two month period. 89 F.2d at 296.

Decisions of the New York courts are similar in effect. In Loeb v. Teitlebaum, 77 A.D.2d 92, 432 N.Y.S.2d 487 (1980), modified on other grounds, 80 A.D.2d 838, 439 N.Y.S.2d 300 (App. Div. 1981), a decision in a malicious prosecution case issued before passage of § 5001, an award of \$150,000 and \$100,000 against two defendants was held excessive and reduced by the trial court to \$50,000 and \$25,000. On appeal, the awards were again reduced, this time to \$17,500 and \$15,750.

In another pre-§ 5001 case, Woodard v. City of Albany, 81 A.D.2d 947, 439 N.Y.S.2d 701 (App. Div. 1981), the court held that an award of \$16,000 on a false arrest claim was excessive where plaintiff was held in custody for only five hours. Similarly, in Hallenbeck v. City of Albany, 99 A.D.2d 639, 472 N.Y.S.2d 187 (App. Div. 1984), the court held that an award of \$25,000 for false arrest was excessive where the plaintiff was held in custody for only three hours and he incurred no substantial physical or mental injury. Finally, in Feldman v. Town of Bethel, 106 A.D.2d 695, 484 N.Y.S.2d 147 (App. Div. 1984), the court reduced a false arrest and malicious prosecution award from \$35,000 to \$15,000.

Here, Martinez testified that Gayson verbally abused him, pushed and grabbed him, knocked him to the ground and arrested him. He was held in custody for approximately five hours and then released. He was later tried and acquitted. He did not sustain any physical injuries and has seen no doctors as a result of the underlying incident. Tr. 75. The amount of back wages and attorneys fees incurred in defense of the criminal prosecution total only \$9,978.40." Finally, plaintiff was humiliated by the posting of his arrest on an airport bulletin board and the subsequent questioning regarding his arrest that took place at a National Guard meeting. Based on the nature of the incident and the damages sustained by Martinez, it is clear that the jury verdict awarding \$310,000 in compensatory damages is excessive.

A new trial on damages is ordered unless plaintiff agrees to a remittitur of \$160,000.

#### IV. Amendment of Judgment

Finally, Port Authority contends that the Judgment is

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<sup>7</sup> This figure represents the \$12,728.40 in lost wages minus five months of unemployment compensation (a total of \$5,000.00) plus \$2,250.00 in attorneys fees incurred in defense of the criminal prosecution.



unclear and should be amended to reflect the dismissal of the 5 1988 claim against it, the dismissal of Servicelink and the joint and several liability of the defendants. Currently, the Judgment reads as follows:

IT IS ORDERED AND ADJUDGED that the plaintiff established by a preponderance of the evidence that Officer Gayson violated his constitutional rights and falsely arrested the plaintiff. The plaintiff was maliciously prosecuted and Officer Gayson is liable for compensatory damages in the amount of \$310,000.00.

The defendant Port Authority is liable to the plaintiff for compensatory damages and Officer Gayson is liable to the plaintiff for punitive damages in the amount of \$10,000.00, for a total of three hundred twenty thousand dollars (\$320,000.00).

Neither Martinez nor Gayson has taken a position on this issue. Because neither party objects, the Judgment will be amended accordingly.

#### CONCLUSION

For the foregoing reasons, defendants' motions are granted in part and denied in part.

Plaintiff is directed to notify the court in writing within fifteen days of the date of this Memorandum and Order of his election. Subject to his election to accept a remittitur,

plaintiff will be awarded \$10,000.00 in compensatory damages and \$10,000.00 in punitive damages. Part Authority is similarly directed to submit a proposed Amended Judgment within fifteen days of the date of this Memorandum and Order.

SO ORDERED.

Dated: Brooklyn, New York  
June 24, 1998

  
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I. Leo Glasser, U.S.D.J.

Copies of the foregoing Memorandum and Order were this day sent to:

Kathleen Collins  
Offices of Milton H. Salant  
One War & Peace Center, 65NE  
New York, New York 10048

Alan D. Levine  
80-02 Kew Gardens Road, Suite 2010  
Kew Gardens, New York 11415

Neil H. Angel  
Certilman, Balin, Adler & Hyman LLP  
90 Merrick Avenue  
East Meadow, New York 11554